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CORPORATION and Counterdefendants GOLDEN
MEDIA GROUP, INC. and TIGA
ENTERTAINMENT COMPANY, LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

v.

TSUBURAYA PRODUCTIONS CO.,
LTD., a Japanese corporation,

Defendant.

Case No. 2:15-cv-03764-AB (AJWx)

**DECLARATION OF TAKASHI
EJIRI IN SUPPORT OF PLAINTIFF
AND COUNTERDEFENDANT UM
CORPORATION'S EVIDENTIARY
OBJECTIONS TO DECLARATION
OF TOSHIAKI IIMURA IN
SUPPORT OF DEFENDANT AND
COUNTERCLAIMANT
TSUBURAYA PRODUCTIONS CO.
LTD.'S MOTION FOR SUMMARY
JUDGMENT [Dkt. 139]**

Date: July 24, 2017
Time: 10:00 a.m.
Location: Courtroom 7B

AND RELATED CROSS-CLAIMS

Motion Hrng. Cutoff: July 24, 2017
Pretrial Conf.: October 16, 2017
Trial: November 7, 2017

DECLARATION OF TAKASHI EJIRI

I, Takashi Ejiri, declare:

1. I am an attorney licensed to practice law in Japan. I am a partner at the law firm of Nishimura & Asahi in Tokyo, Japan. I have been retained as an expert witness on behalf of plaintiff and counterdefendant UM Corporation (“UMC”) and counterdefendants Golden Media Group, Inc. and TIGA Entertainment Company, Ltd. in this action. Unless indicated otherwise, I have personal knowledge of the following facts, and if called as a witness I could and would testify competently to those facts.

2. As set forth in more detail in my resume, a true and correct copy of which is attached to my concurrently filed Declaration in Opposition to TPC’s Motion for Summary Judgment, I received an L.L.B. from Tokyo University in 1967, spent about two years at the Legal Training and Research Institute of The Supreme Court of Japan, and received an L.L.M. from Harvard Law School in 1970. I have been a practicing attorney since 1969. In 1976, I was engaged in legal practice mainly for cross-border transactions at Anderson, Mori & Rabinowitz, Tokyo. In 1977, I co-founded the Masuda & Ejiri Law Offices, which later became the Asahi Law Offices. In 2007, the International Department of the Asahi Law Offices merged with Nishimura & Partners to create Nishimura & Asahi. Nishimura & Asahi is one of the “Big Four” law firms in Japan, and it is currently the largest law firm, by number of attorneys, in Japan. During my career, I have focused on contract law and the interpretation of contracts, and I have handled nearly 200 to 300 license agreements.

3. I submit this declaration in support of UMC’s evidentiary objections to the Declaration of Toshiaki Iimura in Support of Defendant and Counterclaimant Tsuburaya Productions Co. Ltd.’s Motion for Summary Judgment [Dkt. 139] (the “Iimura Declaration”), filed on June 5, 2017 by defendant and counterclaimant Tsuburaya Productions Co., Ltd. (“TPC”).

1 4. Judge Toshiaki Iimura was formerly Presiding Judge on the
2 Intellectual Property High Court of Japan. Judge Iimura was the Presiding Judge
3 on the three-judge panel that issued the July 27, 2011 Judgment of the Intellectual
4 Property High Court [Dkt. 141-6], which ruled on a lawsuit between parties
5 including TPC and UMC that addressed some of the same issues that are presented
6 by this lawsuit. In the Iimura Declaration, Judge Iimura opines at length, as one of
7 TPC's designated experts on Japanese law, concerning certain portions of the July
8 27, 2011 Judgment on which he worked. According to Judge Iimura's Declaration,
9 he "retired from the bench in 2014 to work as an attorney" and "is familiar with
10 these issues because they arose before the courts in Japan when [he] was Presiding
11 Judge and [he] devoted significant time to that matter."

12 5. Under Japanese law, attorneys are subject to ethical rules under the
13 Japanese Attorney Act, Act No. 205 of 1949, and also under the Basic Rules on the
14 Duties of Practicing Attorneys of the Japan Federation of Bar Associations.

15 6. Article 25 of the Japanese Attorney Act provides that "[a]n attorney
16 shall not undertake . . . (iv) [c]ases that he/she handled as a public officer in the
17 course of performing his/her duties and (v) [c]ases that he/she handled as an
18 arbitrator in arbitration procedures." Japanese Attorney Act, Act No. 205 of 1949,
19 art. 25(iv), (v). Attached hereto as Exhibits A and B, respectively, are true and
20 correct copy of excerpts from the Japanese Attorney Act in Japanese, and as
21 translated to English.

22 7. In general, the purpose of Article 25 of the Japanese Attorney Act is
23 (i) to protect the parties' interests, (ii) to ensure fairness in performance of the
24 attorney's duties, and (iii) to maintain the dignity of the attorney. *See* Japan
25 Federation of Bar Associations Research Office, "Commentary of the Attorney Act
26 (4th edition)," *Kobundo*, May 30, 2007, page 182.

27 8. Under the old Japanese Attorney Act of 1893 (*Meiji* 26) (prior to the
28 amendments to the statute in 1933 (*Showa* 8) and 1949 (*Showa* 24)), Article 14(ii),

1 the predecessor to Article 25(iv) of the current Attorney Act, clearly prohibited an
2 ex-judge or ex-prosecutor who is qualified as a lawyer from being involved in a
3 case that he or she handled as the judge or prosecutor. By the amendment in 1933
4 (*Showa* 8), the Act widened the scope of application to all ex-public officers in
5 order to ensure fairness in the performance of the attorney's duties. The current
6 Attorney Act has replaced this clause with Article 25(iv).

7 9. The purpose of current Article 25(iv) is not only to avoid the harmful
8 effects of ex-public officers obtaining unjustified trust from their clients by
9 emphasizing their familiarity with a case that they handled while in public office,
10 but also to consider not discrediting the dignity or trust by claiming widely that
11 they have acted as an attorney in the same case when they were in public office, or
12 by taking the risk of adhering to the same conclusion that they sought as a public
13 officer, and it has also been particularly considered that ex-judges and ex-
14 prosecutors should not discredit the dignity and trust of attorneys by handling the
15 same case, taking advantage of their past positions, since they were able to obtain
16 knowledge of the case from both parties. Japan Federation of Bar Associations
17 Research Office, "Commentary of the Attorney Act (4th edition)," *Kobundo*, May
18 30, 2007, page 203. It is prohibited for an ex-judge, an ex-prosecutor, or other ex-
19 public officers to become counsel or be involved in as part of their practice as
20 attorneys in a case that they handled while in public office. "Overview of the
21 Attorney's Act (4th Edition)," *Sanseido*, March 5, 2012, page 112. The rationale
22 of Article 25(v), which prohibits an attorney from undertaking cases that he/she
23 handled as an arbitrator in arbitration procedures, is the same as that of Article
24 25(iv). See Japan Federation of Bar Associations Research Office, "Commentary
25 of the Attorney Act (4th edition)," *Kobundo*, May 30, 2007, page 208.

26 10. As I testified at my deposition (at page 137), I have found no case law
27 precedent that expressly addresses the current situation presented by the Iimura
28 Declaration. However, it is my opinion that his role as a legal expert witness in the

1 U.S. litigation after having served as the presiding judge in the Japanese litigation
2 is not consistent with the intent of Article 25(iv) of the Attorney Act. This
3 situation would not be permitted at my law firm. It is my opinion that Japanese
4 law would recognize the commonality of facts and issues involved in the Japanese
5 litigation involving TPC and UMC and the U.S. litigation involving TPC and
6 UMC to find that this is the same case or dispute, within the meaning of the statute,
7 as the one over which Judge Iimura previously presided when he was on the
8 Intellectual Property High Court of Japan. Further, it is my opinion that Judge
9 Iimura's service as TPC's expert on Japanese law constitutes providing legal
10 services and the undertaking of a case that he handled as a public officer.

11 11. Similarly, Article 27 of the Basic Rules on the Duties of Practicing
12 Attorneys of Japan of the Japan Federation of Bar Associations provides that "[a]n
13 attorney shall not undertake . . . [a] matter which the attorney handled in the past as
14 a public servant." Basic Rules on the Duties of Practicing Attorneys, art. 27(iv).
15 Article 82 of the Basic Rules of Practicing Attorneys of Japan provides that certain
16 Rules may be interpreted as mere guidelines, but Article 82 does not list Article 27
17 among those; thus, Article 27 is mandatory and applies to all practicing attorneys.
18 Attached hereto as Exhibits C and D, respectively, are true and correct copies of
19 excerpts from the Basic Rules on the Duties of Practicing Attorneys of Japan in
20 Japanese, and as translated to English.

21 12. With regard to Article 27(iv) of the Basic Rules on the Duties of
22 Practicing Attorneys ("[a] matter which the attorney handled in the past as a public
23 servant"), the situation shall be the same between the case that he or she handled
24 as a public officer and the case he or she undertook as an attorney; and it is
25 interpreted as the same situation when the facts in the cases are the same as the
26 circumstances in a given context. Japan Federation of Bar Associations Ethics
27 Committee, "Commentary on Attorney Ethics (revised edition)," *Yuhikaku*, March
28 30, 1996, page 128. Even if two cases are not considered as the same because of

1 the name of the case or because of the legal format, such that a case is criminal and
2 the other is civil, when both cases involve the same issue such as the existence of a
3 social fact, it will violate of Attorney Act 25(iv). Japan Federation of Bar
4 Associations Ethics Committee, “Interpretation on Attorney Ethics (2nd edition),”
5 March, 2012, page 74.

6 13. According to his declaration, Judge Iimura now practices as an
7 attorney. For the reasons stated above, it is my opinion that this case and the
8 previous Japanese litigation constitute the same matter under Japanese law. Thus,
9 it is also my opinion that the Basic Rules on the Duties of Practicing Attorneys of
10 Japan prohibit Judge Iimura, an attorney, from undertaking this matter as a retained
11 expert.

12 14. Article 214(1) of the Japanese Code of Civil Procedure, which regards
13 the “circumstances with regard to an expert witness that would prevent him/her
14 from giving a sincere expert testimony,” prohibits expert testimony where one of
15 the parties has a reasonable suspicion that the expert witness will testify unfairly as
16 a result of the relationships between the other party and the expert witness and/or
17 between the witness and the case. Specifically, such circumstances include (a)
18 being in a close relationship with one party through friendship, employment, or
19 business; (b) having a special interest in the case; and (c) being provided materials
20 by one party to give an expert opinion without allowing any opportunity for the
21 other party to provide their materials. *See Mr. Mikio Akiyama et al.*, Commentary
22 on the Code of Civil Procedure IV, *Nihonhyoronsha*, December 20, 2010 (*Heisei*
23 22), page 307. Attached hereto as Exhibits E and F, respectively, are true and
24 correct copies of excerpts from the Japanese Code of Civil Procedure in Japanese,
25 and as translated to English.

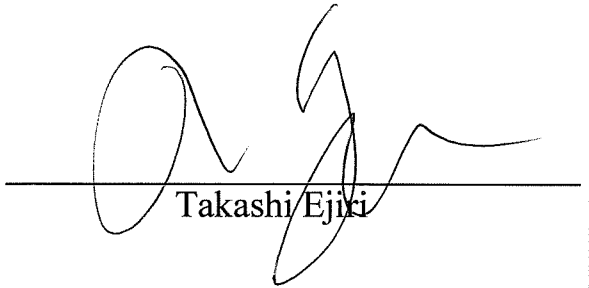
26 15. As discussed above, one such example of an expert who may testify
27 unfairly is an expert who has a special interest in the case. Given that Judge Iimura
28 has previously presided over the case as discussed above, it is my opinion that it is

1 reasonable to suspect that Judge Iimura will testify in conformance with the
2 previous judgment out of a special interest in justifying the judgment, regardless of
3 his present view on the merits of the case.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

6 Executed this 22nd day of June, 2017, at Tokyo, Japan.

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Takashi Ejiri